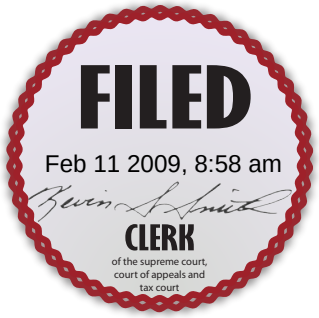

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IN THE
COURT OF APPEALS OF INDIANA

LARRY HECK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 75A03-0805-CR-222
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Kim Hall, Judge
Cause No. 75C01-0709-FA-3

February 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Larry Heck appeals his sentence for rape, a Class B felony; battery, a Class C felony; criminal confinement, a Class D felony; and attempted escape, a Class B felony. On appeal, Heck raises two issues, which we consolidate and restate as whether his sentence is inappropriate. Concluding Heck's sentence is not inappropriate, we affirm.

Facts and Procedural History

In the early morning hours of September 3, 2007, Heck and his girlfriend, Julie Fulk, were at Heck's mother's Knox County home and got into an argument, culminating in Heck striking Fulk several times in the face. After the attack, Heck grabbed Fulk by the arm, telling her "they were leaving because the cops were after him," but eventually let her go after the two had run into a nearby woods. Appellant's Appendix at 12.

Several hours later, Heck went to the home of Gary Wilde. Heck and Wilde were apparently acquaintances, but not friends because, shortly after arriving, Heck struck Wilde in the face and demanded the keys to Wilde's moped. Wilde complied, and Heck drove the moped to the home of C.S., who had hired Heck to do yard work in the past. After raping C.S. at knifepoint, Heck attempted to take her hostage, but relented when C.S. told him, "you might as well kill me; I am not going with you." Id. at 11. Instead, Heck stole C.S.'s vehicle, but was apprehended later that morning. At an initial hearing on September 5, 2007, Heck struck a sheriff's deputy and attempted to flee the courthouse.

Heck's conduct resulted in the State filing twelve charges against him.[1] Pursuant to a plea agreement, Heck agreed to plead guilty to Class B felony rape relating to the attack on C.S., Class C felony battery and Class D felony criminal confinement relating to the attack on Fulk, and Class B felony attempted escape relating to the courthouse incident, with the State agreeing to dismiss the remaining charges. At a guilty plea hearing, Heck admitted to the allegations in the charging informations and the statements in the probable cause affidavits to which he pled guilty, and the trial court took Heck's plea under advisement. At a sentencing hearing, after accepting Heck's guilty plea, the trial court found no mitigating circumstances and the following aggravating circumstances: Heck's criminal history, Heck's commission of the instant offenses while on probation, a lesser sentence would depreciate the seriousness of the offenses, and Heck's previous ineffective rehabilitative treatment. Based on these findings, the trial court sentenced Heck to twenty years for Class B felony rape, six years for Class C felony battery, two years for Class D felony criminal confinement, and twelve years for Class B felony attempted escape. The trial court also ordered that Heck serve the sentences consecutively and that none of them be suspended, resulting in an aggregate sentence of forty years with the Indiana Department of Correction. Heck now appeals.

[1] Specifically, the charges are as follows: Class A felony rape, Class B felony robbery, Class B felony criminal confinement, and Class D felony auto theft relating to the attack on C.S.; Class C felony battery and Class D felony criminal confinement relating to the attack on Fulk; Class C felony robbery, Class B misdemeanor battery, and Class D felony theft relating to the attack on Wilde; and Class B felony attempted escape and Class D felony battery relating to the incident at the courthouse. The twelfth charge was Class B felony rape as a lesser-included offense of the Class A felony rape charge.

Discussion and Decision

I. Standard of Review

This court has authority to revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We may "revise sentences when certain broad conditions are satisfied," Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005), and recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed," Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we examine both the nature of the offense and the character of the offender. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When making this examination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. However, "a defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Appropriateness of Sentence[2]

We note initially that Heck argues this court is precluded from reviewing the nature of the offenses because the trial court did not make findings in that regard. Heck does not cite authority to support this contention, and we note that requiring a trial court to make such findings would be inconsistent with the plenary nature of 7(B) review. See Payton, 818 N.E.2d at 498; Roney, 872 N.E.2d at 206; see also McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited, however, to a simple rundown of the aggravating and mitigating circumstances found by the trial court."); Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006) ("We will assess the trial court's recognition or nonrecognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed here was inappropriate." (emphasis added)). Thus, we reject Heck's argument, and note that at least one of Heck's

[2] While arguing his sentence is inappropriate, Heck intersperses two arguments that the trial court abused its discretion when it sentenced him, specifically that the trial court improperly refused to find several mitigators and that the trial court did not articulate its reasons for imposing sentences for each offense in excess of the advisory or its reasons for ordering those sentences to be served consecutively. Regarding the trial court's claimed failure to find mitigators, Heck overlooks that the only mitigator he advanced during the sentencing hearing was his intoxication, and a trial court cannot be said to have abused its discretion on the basis of a mitigator the defendant did not advance. See Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied. A guilty plea is an exception to this rule, Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007) (opinion on reh'g), but to the extent Heck argues the trial court improperly rejected it, he overlooks the State dismissed eight charges in exchange for his plea, at least three of which – the robbery of Wilde, the robbery of C.S., and the battery at the courthouse – are not lesser-included offenses of those to which he pled guilty. Heck therefore received a substantial benefit from his plea, and a trial court is not required to find that a defendant's guilty plea is a mitigator under such circumstances. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Regarding the trial court's claimed failure to articulate its reasons for imposing enhanced, consecutive sentences, we disagree with Heck's assessment. Instead, our review of the trial court's sentencing order, as well as its oral remarks at sentencing, indicate the trial court explained why it found certain aggravators, particularly the criminal history aggravator, see transcript at 23-25, and why the aggravators warranted enhanced, consecutive sentences, see, e.g., id. at 26 (noting "the violence you're committing on other people has now included sexual violence").

offenses, the rape of C.S., was more egregious than a typical Class B felony rape because Heck committed the offense while armed with a deadly weapon.

But even if the nature of the offenses were not more egregious than is typical, Heck's character alone is sufficient to sustain his sentence. Since reaching the age of majority in 1999, Heck has been convicted of fourteen misdemeanors, two of which were for battery and two of which were for resisting law enforcement, during the course of nine separate criminal proceedings. During the criminal proceeding immediately before his commission of the instant offenses, which occurred in July 2004, Heck was convicted of five felonies: two counts of battery, one as a Class C felony and one as a Class D felony, Class D felony attempted battery, Class D felony criminal confinement, and Class D felony resisting law enforcement. Heck received an eight-year sentence for these offenses, two of which were suspended to probation, and then committed the instant offenses while on probation. The record thus indicates Heck has been breaking the law or incarcerated for nearly all of his adult life, and also that his criminal conduct – especially when it comes to battery, resisting law enforcement, and criminal confinement – is serial. The weight afforded to a defendant's criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the instant offenses. Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). The foregoing recitation of Heck's criminal history, coupled with the fact that he committed the instant offenses while on probation, which itself comments negatively on his character, cf. Ind. Code § 35-38-1-7.1(a)(6) (stating that a defendant's recent violation of a condition of probation

may constitute an aggravating circumstance), convinces us Heck's character does not render his sentence inappropriate.

Conclusion

Heck's sentence is not inappropriate in light of the nature of the offenses and his character.

Affirmed.

CRONE, J., and BROWN, J., concur.